IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8219 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMSAMUJ RAMDAYAL JAISWAL

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

MR AJ DESAI ASSTT GOVT PLEADER for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/01/2000

ORAL JUDGEMENT

#. Heard Mr.Deepak M. Thakker, learned advocate for Ms.Suman Pahwa, learned advocate on behalf of the petitioner and Mr.A.J.Desai, learned AGP appearing for

respondents No. 1, 2 & 3 and Ms.Parinda Dawawala for respondent No.4.

#. The order of detention dated 23-9-99 passed by respondent No. 2 - The District Magistrate, Vadodara against the petitioner in exercise of powers conferred under Section 3(2) of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (`PBM' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu, a copy of which is produced at Annexure-B interalia indicates that the petitioner has been running a fair price shop at village Kanabeda of Taluka : Kavan, District : Vadodara under the Government Scheme of distribution of essential commodities for the benefit of the persons living below poverty line. The grounds indicate that on 23-7-99, the son of the petitioner was caught red handed transporting 110 kg. wheat from the supply provided to the fair price shop of the petitioner for distribution to the card holders. That said act was in breach of licence granted to the petitioner. Not only that on 24-7-99, when a stock register of wheat was called for and subsequent inquiry was made regarding the record maintained at the fair price shop of the petitioner, it was found that record was not maintained properly and petitioner has misled the authority regarding whereabouts of the record. The grounds also indicate that on verification of stock on 17-5-99 and 24-5-99, it was found that 340 kg. of wheat was shown as opening stock while the sale amounted to 410 kg. Similarly, discrepancy was also found on the entries made in the stock registerer on 24-5-99 and as such, it was alleged that the petitioner has been disposing of the wheat supplied to him for card holders, to make wrongful gain by black marketing. The grounds also indicate that on inquiry, it was found that 14,500 liters of blue kerosene was also disposed of without showing it in the stock register and whereby, it was alleged that the same was disposed of to make illegal profit by black marketing. The District Magistrate on inquiry has found that the petitioner has committed various acts in breach of condition of Gujarat Essential Articles (Licence Control and Declaration) Order 1981, particularly, Item No : 22 and 23 as well as conditions No : 4, 8 and 9 of the licence issued to the petitioner. The petitioner has also committed a breach of condition of the agreement contained at Item No : 7(b), 8(c)(1) and 8(c)(2) as well as Item No : 5.

That on the basis of the said material, the District Magistrate as the detaining authority has come to the conclusion that in order to prevent the petitioner from continuing his prejudicial activities which amounted to adversely affecting to the maintenance of supply of commodities essential to the community, the petitioner is required to be detained under provisions of "PBM Act" because cancellation of licence would not be an effective remedy as the petitioner can initiate proceedings against it and prolong the time and hence, impugned order is passed. That the impugned order could be served on 24-9-99 and since then the petitioner is in detention.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that a representation dated 5-10-99 addressed to the District Magistrate, Vadodara, copy of which is produced at Annexure-C to the petition was forwarded on behalf of the petitioner / detenu by his advocate through speed post which was received on 7-10-99 by the District Magistrate as the detaining authority. However, instead of forwarding the same forthwith to the State Government, the District Magistrate appears to have forwarded the same on 13-10-99 to the State Government and the State Government appears to have decided the same on 20-10-99, and the communication was received by the detenu on 22-10-99. Thus, the delay in considering the representation by the competent authority has violated the mandate of Article 22(5) of the Constitution of India, and has rendered the continued detention invalid and thereby, the impugned order is required to be revoked.

#. The learned AGP appearing on behalf of respondents No.1 to 3 relying on the affidavit filed by respondent No .2 dated 25th January 2000 has urged that as averred in para 10 of the affidavit, respondent No.2 had received the subject representation on 7-10-99. However, by mistake it was sent to the Extra Chitnis. That on 9-10-99 and 10-1-99 being a public holidays, the subject representation could be received back in supply branch on 10-12-99 and the same was forwarded to the State Government on 13-10-99 which was duly decided on 20-10-99 and communicated to the detenu by letter dated 22-10-99. That the said explanation on due consideration suggests that the same cannot be said to be a deliberate or intentional act on the part of respondent No.2 to withhold the representation from consideration by the competent authority.

#. That the Division Bench of this Court in the matter of URMILABEN NAVNITLAL GANDHI VS COMMISSIONER OF POLICE, SURAT CITY reported vide 1994 (2) GLH (UJ) 10, has observed that after the order is approved by the State Government, the detaining authority becomes functus officio and has no power to consider the representation, thereby, the detaining authority has to forward the same to the State Government as expeditiously as possible. The Division Bench has also relied on the observations made by the Hon'ble Supreme Court in the matter of HARISH PAHWA VS. STATE OF UTTER PRADESH reported vide AIR 1981 SC 1126, wherein, it is held that delay of 3 days if not properly explained, amounts to causing violation of mandate under Article 22(5) of the Constitution of India rendering the continued detention illegal.

In the instant case, affidavit of respondent No.2 merely states the facts that by mistake , the subject representation was sent to the office of Extra Chitnis and as such, on account of intervening holidays,the same could not be sent to the State Government before 13-10-99. The statement of said fact cannot be said to be a reasonable explanation for causing delay in forwarding the representation to the competent authority. That said delay of 6 days cannot be said to have properly explained but on the face of it, can be held to be inordinate delay, rendering the continued detention illegal.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The impugned order dated 23-9-99 passed against the petitioner is hereby revoked and the petitioner - SHRI RAMSAMUJ RAMDAYAL JAISWAL is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 28-1-2000 [A.K.Trivedi, J.]

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